

800 121-2288

Blue R
452

DEPARTMENT OF STATE A/CDC/MR

REVIEWED BY cdell DATE 9-30-82

RDS ☐ OF XDS ☐ EXT. DATE _____

TS AUTH: _____ REASON(S) _____

ENDORSE EXISTING MARKINGS ☐

DECLASSIFIED ☐ R. LEADAGE ☒

RELEASE DENIED ☐

PA OF FOI EXEMPTIONS _____

The Government of the United States refers to the Danish Government's note of March 17, 1980, concerning the case Linskey v. Heidelberg Eastern, Inc., 470 F. Supp. 1181 (E.D.N.Y. 1979), leave to appeal denied, Civ. 79-8475 (2d Cir. Jan. 23, 1980), and its relationship to the Treaty of Friendship, Commerce and Navigation between the United States of America and the Kingdom of Denmark, signed on October 1, 1951.

Issues similar to those presented in the above-mentioned note have arisen under similar provisions of United States treaties with other countries. They have been extensively considered by the Department of State and by United States courts (which must construe and apply such treaties as an element of United States domestic law). After extensive review of the matter, including study of the negotiating records of the several United States bilateral treaties of friendship, commerce and navigation containing provisions similar to Article VII(4) of the U.S.-Danish treaty, the Department of State has concluded that it was not the intent of the negotiators that Article VII of the Treaty cover locally-incorporated subsidiaries of United States and Danish corporations. To the contrary, Article XXII(3) of the Treaty specifically provides that:

"Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party."

In this Government's opinion, Article VII is therefore inapplicable to Heidelberg Eastern, Inc. and East Asiatic Company, Inc., which are incorporated under the laws of New York. Whatever rights East Asiatic Company, Ltd., a Danish company within the meaning of Article VII, may enjoy under that Article do not extend to its subsidiaries.

Article VIII(1), which authorizes nationals and companies of one Party to constitute certain local companies in the territory of the other Party and to control and manage such enterprises, does not compel the contrary conclusion. Article VIII(2) clearly provides that companies constituted under the laws of one Party and controlled by companies of the other Party shall be entitled only to national treatment. National treatment does not entail any exemption from host country laws applicable to host country companies.

In addition, even if Article VII(4) were applicable to subsidiaries incorporated in the United States, that Article would not preclude absolutely the application of statutes barring employment discrimination. The language of that Article authorizes certain employment decisions without reference to nationality, but it does not extend to a blanket exemption from all legislation concerning discrimination in employment.

Regarding the general issue of the applicability of United States employment discrimination laws to companies (and their subsidiaries) of countries with which the United States has commercial treaties, we enclose two other recent United States court cases involving interpretation of similar provisions in the 1953 Treaty of Friendship, Commerce and Navigation between the United States and Japan, Spieß v. C. Itoh & Co., 469 F.Supp. 1 (S.D. Tex., 1979), appeal docketed, No. 79-2382 (5th Cir. June 11, 1979); and Avigliano v. Sumitomo Soji America, Inc., 473 F.Supp. 506 (S.D.N.Y. 1979), appeal docketed, No. 80-7418 (2nd Cir. May 21, 1980). Both these cases were decided along the lines of the reasoning set forth above.

Enclosures:

As described.

Drafted: L/EB:JBello-5/9/80; L/FUR:JRCrook-6/17/80;
L/EUR:HCollums-3/29/80 *HC*
Clearances: FEOC/GC:LPraeger *LP*
EUR:HE:FDameron *HE*
EB/EPD/OIA:RRobertson *EB*
S/S-S:FDenham *SD*

med
4 1980
Department of State, September 11, 1980
Washington,